

**UNITED STATES COPYRIGHT ROYALTY JUDGES**  
**The Library of Congress**

*In re*

**DETERMINATION OF ROYALTY RATES AND  
TERMS FOR TRANSMISSION OF SOUND  
RECORDINGS BY SATELLITE RADIO AND  
“PREEXISTING” SUBSCRIPTION SERVICES  
(SDARS III)**

**Docket No. 16-CRB-0001 SR/PSSR  
(2018-2022)**

**ORDER DENYING SERVICES’ MOTION TO DISMISS  
GEORGE D. JOHNSON D/B/A GEO MUSIC GROUP**

By notice published in the *Federal Register*, the Copyright Royalty Judges (Judges) solicited Petitions to Participate in this proceeding to determine terms and rates for the licensing of digital transmission of sound recordings and the associated making of ephemeral recordings of sound recordings by satellite radio and “preexisting” subscription services (“PSS”). 81 Fed. Reg. 255 (Jan. 5, 2016). The Judges received timely petitions from, among other petitioners, George D. Johnson d/b/a GEO Music Group (GEO). On September 15, 2016, Sirius XM Radio Inc. and Music Choice (collectively, the Services)<sup>1</sup> filed a motion (Motion) to dismiss GEO’s petition for failing to demonstrate a significant interest in this proceeding. Motion at 1. GEO filed its response opposing the Motion on September 23, 2016, and the Services filed their reply on September 26, 2016.

The Services advance three arguments for dismissing GEO’s petition. First, the Services argue that GEO’s petition was procedurally deficient. Motion at 1-2. The Judges’ regulation pertaining to Petitions to Participate requires “[a] description of the petitioner’s significant interest in the subject matter of the proceeding.” 37 C.F.R. § 351.1(b)(1)(B). The Services note that while the GEO petition states that GEO “has a significant interest,” they claim it does not include a description of that interest as required by the Judges’ procedural rules.

In the same sentence in which GEO claims it has a significant interest, GEO states that “[f]or 30 years GEO has been an individual American singer-songwriter, independent label owner, copyright creator, and owner of exclusive rights ....” GEO Petition to Participate at 1 (Feb. 1, 2016). That description of GEO’s business is sufficient to satisfy the “description” requirement of section 351.1(b)(1)(B), particularly given that GEO is participating *pro se*.

The Services’ second argument is that GEO’s interest in the proceeding is not “significant.” The Services provide declarations by executives of the only three licensees whose

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<sup>1</sup> The Motion also purports to represent the views of Muzak LLC (Muzak). Motion at 1. Muzak withdrew from this proceeding on August 24, 2016. It is no longer in a position to file motions in this proceeding without leave of the Judges to do so. The Judges accept the Motion, but only as a motion of Sirius XM Radio Inc. and Music Choice.

rates are to be determined in this proceeding, to the effect that those licensees have not ever performed any of GEO's sound recordings, nor do any of them intend to do so in the future. *See* Motion at 4; Sirius XM Declaration ¶ 2; Music Choice Declaration ¶¶ 2-3; Muzak Declaration ¶ 2. The Services conclude that, because "GEO's sound recordings have never, and will never, be used under the license at issue in this proceeding ... GEO cannot have a 'tangible interest' in this proceeding ...." Motion at 4.

Under sections 112 and 114, the Services may make specific uses of any sound recording protected under the Copyright Act. The Services' present intentions notwithstanding, they will have legal authority to use GEO's existing and future sound recordings at any time during the upcoming rate period by complying with the rates and terms the Judges are to determine in this proceeding. GEO's legal rights as a copyright owner are directly affected by this proceeding. Therefore, GEO has the requisite "substantial interest."

Finally, the Services argue that "to the extent GEO merely seeks to object to the rates set in this proceeding ... *despite not itself* using or *being subject to the license at issue*, the Librarian of Congress has previously held such an interest to be insufficient." *Id.* (emphasis added). The Services' reliance on the Librarian's decision in *PSS II*<sup>2</sup>—a decision that involved neither a copyright owner nor a copyright user<sup>3</sup>—is misplaced because it is based on an erroneous premise. Unlike the party in *PSS II*, GEO *is* subject to the license at issue. Regardless of the Services' past programming practices and present intentions, they are free to use GEO's works at any time and GEO would have no say in the matter—that is the essence of a statutory license.

For the forgoing reasons, the Judges **DENY** the Services' Motion.

**SO ORDERED.**

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Suzanne M. Barnett  
Chief Copyright Royalty Judge

DATED: September 29, 2016.

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<sup>2</sup> 68 Fed. Reg. 39837 (Jul. 3, 2003).

<sup>3</sup> In *PSS II*, the Librarian found that an entity that collected royalties under *other* compulsory licenses on behalf of copyright owners did not have a substantial interest in the license for preexisting subscription services. *Id.* at 39839.